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Executive Director

# Public Utility Commission of Texas

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Pat Wood, III  
Chairman

Judy Walsh  
Commissioner

Brett A. Perlman  
Commissioner

June 9, 1999

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FCC MAIL ROOM

Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

RE: CC Docket No. 98-147, FCC 99-48  
In the Matter of Deployment of Wireline Services Offering  
Advanced Telecommunications Capability

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus four copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to ITS and the Common Carrier Bureau. We are also providing an electronic copy of these comments via your ECFS interface.

Sincerely,

*Stephen J. Davis*

Stephen J. Davis  
Chief, Office of Policy Development

cc: ITS, Inc.  
Janice Myles, Common Carrier Bureau

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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**FCC MAIL ROOM**

**In the Matter of**

**Deployment of Wireline Services Offering  
Advanced Telecommunications Capability**

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**CC Docket No. 98-147**

**FURTHER COMMENTS OF THE  
PUBLIC UTILITY COMMISSION OF TEXAS**

**Pat Wood, III, Chairman  
Judy Walsh, Commissioner  
Brett A. Perlman, Commissioner**

**June 3, 1999**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Deployment of Wireline Services Offering</b>	)	<b>CC Docket No. 98-147</b>
<b>Advanced Telecommunications Capability</b>	)	
	)	

**FURTHER COMMENTS OF THE  
PUBLIC UTILITY COMMISSION OF TEXAS**

**I. Introduction**

1. On March 31, 1999, the Federal Communications Commission ("FCC" or "Commission") released the First Report and Order and Further Notice of Proposed Rulemaking ("Further NPRM") in this proceeding.<sup>1</sup> The Public Utility Commission of Texas ("Texas PUC"), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Further Comments on certain issues considered in this proceeding. The Texas PUC previously filed Comments in response to the Commission's initial NPRM in this proceeding.<sup>2</sup>

2. The Texas PUC has shown by its activities and decisions that it is firmly committed to implementing the competitive aspects of the Telecommunications Act of 1996,<sup>3</sup> and is especially committed to ensuring the availability of advanced telecommunications service to the citizens of Texas. Through the approval of interconnection agreements and the arbitration of disputed cases, the Texas PUC is attempting to bring the benefits of competition to Texas as quickly as

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<sup>1</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capabilities*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 99-48 (Mar. 31, 1999).

<sup>2</sup> Comments of the Public Utility Commission of Texas, CC Docket No. 98-147, September 24, 1998.

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* ("Act").

possible. We believe we are on the leading edge of many technological issues, and we are compiling a significant evidentiary record from competitive and incumbent service providers. The Texas PUC has addressed some of these issues in Southwestern Bell's § 271 proceeding, resulting in an agreement with SWBT on a general framework for spectrum management and deployment of advanced services within SWBT's network.<sup>4</sup>

3. Several of the issues on which the FCC is seeking comments are currently pending before the Texas PUC as a part of the arbitration of interconnection agreements under Section 252 of the Act. Specifically, we are considering petitions for arbitration within which the issues of binder group management, spectrum management, and spectrum compatibility are being addressed as part of the CLECs' effort to utilize the incumbent LEC's loop for the provision of DSL services.<sup>5</sup> Therefore, on these issues, we will be providing general comments to the Commission, but will refrain from presenting any position that may represent a premature decision on a pending case. In addition, the Texas PUC has not addressed the issue of line sharing in any of its proceedings, and while we recognize that the issue is extremely important in view of today's emerging technologies, we will not be able to provide guidance to the Commission on those questions.

## **II. Spectrum Compatibility – Standards and Practices**

4. The Commission seeks comment on its tentative conclusions about the standards setting process and whether the Commission has the authority to compel or direct industry standard setting bodies on spectrum compatibility and spectrum management issues.<sup>6</sup> The Texas PUC

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<sup>4</sup> *Memorandum of Understanding*, Project No. 16251, Investigation of Southwestern Bell Telephone Company's Entry into Texas InterLATA Telecommunications Market, Apr. 26, 1999, Amended May 10, 1999.

<sup>5</sup> Petition of Accelerated Connections, Inc., d/b/a ACI Corp., for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Docket No. 20228, and Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Telephone Company, Docket No. 20272.

<sup>6</sup> Further NPRM, ¶ 79.

agrees with the FCC's tentative conclusion that incumbent local exchange carriers (ILECs) should not be allowed to unilaterally set spectrum compatibility and spectrum management standards.<sup>7</sup> We share the FCC's concern that any standard must balance the competitive local exchange carriers' (CLECs') desire to provision advanced services with the network protection concerns of ILECs. Policies regarding spectrum management and spectrum compatibility should be set in a competitively neutral process that includes the active participation of ILECs, CLECs, equipment suppliers, and other research bodies.

5. Towards this end, we believe the FCC can encourage, offer suggestions to industry standards-setting bodies, or establish guidelines for adopting spectrum management and spectrum compatibility standards developed by the industry. However, the Texas PUC does not believe that the FCC should "direct" or "compel" industry standard setting bodies to adhere to standard setting requirements of the FCC. If the T1E1.4 group (or another bona fide industry standards group) does develop a standard, the FCC or a state regulator may adopt the standard by reference, after first gathering comments from all parties to ensure that the standard is reasonable.

### **III. PSD Standards**

6. The Commission seeks comment on the best processes or forum for developing future power spectral density (PSD) masks.<sup>8</sup> The Texas PUC supports the Commission's tentative conclusion that ANSI's T1E1.4 working group is the best choice at this time for evaluating and setting standards for PSD masks. The telecommunications industry has successfully developed agreed-upon PSD masks through the T1E1.4 working group. Therefore, T1E1.4 is an example

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<sup>7</sup> *Id.*

<sup>8</sup> Further NPRM, ¶ 81.

of an appropriate forum for all industry participants to resolve technical issues, and we support its continued involvement in developing power spectral density masks.

7. The task of establishing PSD standards for deployment of advanced services on the existing network is undoubtedly a complex issue. Issues such as interference and quality of service underscore the need for technical industry experts, rather than regulatory bodies, to establish PSD standards. Should coalitions or bodies other than T1E1.4 develop PSD masks, the Texas PUC notes that industry and the free market will most efficiently determine which PSD masks will eventually be adopted by the equipment manufacturers. Adopting a “hands-off” regulatory policy for developing PSD masks will be in keeping with the doctrine that the free market encourages innovation, and will be consistent with the pro-competitive intent of the FTA.

#### **IV. Fostering Broader Participation and Representation**

8. The FCC seeks comment on how to foster broader representation and participation in a standards body, and methods of guaranteeing fair and timely resolution of spectrum compatibility problems.<sup>10</sup> In the current competitive environment, a great deal of incentive exists for every “player” to ensure that they are represented in standards bodies, without the need for federal or state regulatory intervention. If a party has not been allowed to participate fairly in the industry standards-setting process, then that party should be able to pursue remedies through the FCC.

#### **V. Encouraging Deployment of Advanced Services**

9. The FCC seeks comment on methods to encourage the industry to develop fair and open practices for the deployment of advanced services technologies, and the role the Commission

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<sup>9</sup> Id.

<sup>10</sup> Id.

should take in facilitating broad participation.<sup>11</sup> The Texas PUC generally supports the Commission's efforts to facilitate fair and open deployment of advanced service technologies, but suggests that the Commission continue to allow the states to develop deployment guidelines at their discretion. Given that it is impossible to predict every deployment scenario and difficulty, state commissions should be allowed to address these issues as they arise.

10. In Texas' § 271 process involving SWBT, the Texas PUC has effectively opened the loop to competitors on a trial basis. For a twelve-month trial period, CLECs may order loops without the Texas PUC's involvement. A technology trial that takes place under this provision will not be deemed successful until it has been deployed without significant degradation for 12 months or until national standards have been established. Any CLEC providing loop technologies under this trial period will assume full responsibility for any damage, service interruption, or other telecommunications service degradation effects and will indemnify SWBT for any damages to SWBT's facilities.

## **VI. Dispute Resolution**

11. The Commission seeks comment on whether to develop a dispute resolution process regarding the existence of disturbers in shared facilities.<sup>12</sup> The Commission also seeks comment on whether to further define the phrase "significantly degrade." The Texas PUC suggests that the Commission defer to the existing state dispute resolution processes instead of developing a new process to specifically address this issue.

12. The Texas PUC shares the Commission's desire to ensure that consumers have the broadest selection of services from which to choose without harming the network. The

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<sup>11</sup> Further NPRM, ¶ 85.

<sup>12</sup> Further NPRM, ¶ 88.

*Memorandum of Understanding* in Texas' § 271 process<sup>13</sup> proposes that CLECs may order loops for the provision of any advanced service, including services that have not been approved by the FCC or a state commission during the 12 month trial period.

13. The Texas PUC has also chosen to exercise its authority in determining whether a technology significantly degrades the performance of other services. After deployment, if an ILEC or CLEC claims that another carrier's service is significantly degrading the performance of other services, then the LEC will notify the causing carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm will be brought before the Texas PUC for resolution. The Texas PUC would urge the Commission to allow state commissions to continue working with ILECs and CLECs to resolve degradation issues. State regulators are in the best position to quickly and fairly resolve spectrum compatibility and other standards-related complaints through their § 252 arbitration procedures.

#### **VII. Third Party Assistance in Developing Loop Spectrum Management Policy**

14. The Commission seeks comment regarding the solicitation of a third party to assist in developing loop spectrum management policies.<sup>14</sup> The Texas PUC believes that there are specific situations in which third parties may be successfully utilized in implementing the policies adopted by state regulators or the FCC. However, the Texas PUC believes that public policy must be developed by regulatory bodies rather than third parties. Disputes about those policies can then be addressed in the dispute resolution processes available to state commissions.

#### **VIII. Forward-Looking Policy**

15. The FCC seeks comment on measures the Commission could take to ensure that spectral compatibility and other advanced services requirements are able to evolve over time to

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<sup>13</sup> Memorandum of Understanding, Attachment B, § V(C).

<sup>14</sup> Further NPRM, ¶ 89.



encourage, rather than stifle, innovation and deployment of advanced services.<sup>15</sup> The Texas PUC believes that the FCC should only have a limited role in ensuring that standards are set in a forward-looking manner. The philosophy of standards bodies like T1E1.4 is to develop standards on a forward-looking basis, since the entire telecommunications industry has a stake in ensuring that the standards they set encourage innovation and deployment. The Texas PUC believes that, by responding to market forces, the industry panels will be successful in developing standards that foster innovation and deployment. The FCC's role should be limited to encouraging fair representation and resolving disputes within its jurisdiction.

16. However, the Commission could play a significant role in developing standards for service quality. This would enable the FCC to concentrate its resources on the end result, rather than process-oriented issues associated with developing an industry standard. For instance, states generally have adopted service quality standards for voice grade telecommunications services. Those standards typically include measures for transmission loss and noise, but do not control the methods by which carriers achieve those goals. This concept can be used for advanced services, and comports with the traditional service quality approach of the FCC.

17. Currently it is unclear what precision can be injected into service quality goals for advanced services. As previously discussed, the Texas PUC chose to address these goals in Texas' § 271 process by ordering a 12 month technology test period, combined with a joint forum (SWBT, CLECs, Texas PUC) to address spectrum management practices.<sup>16</sup> Following the prescribed test period, the Texas PUC should be able to address service goals issues more precisely.

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<sup>15</sup> Further NPRM, ¶ 91.

<sup>16</sup> Memorandum of Understanding, Attachment B, § V(C).

**IX. Conclusion**

18. The Texas PUC appreciates the opportunity to contribute to the Commission's review of these issues. It is our intent to aggressively pursue policies and decisions that will bring the benefits of competition and advanced services to all the citizens of Texas.

Respectfully submitted,

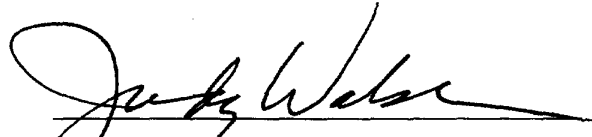
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June 3, 1999




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